

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

2003 SEP 25 PM 1: 51

NANCY M.
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ELOUISE PEPION COBELL, et al.,)
)
Plaintiffs,)
)
v.)
)
GALE A. NORTON, Secretary of the Interior, et al.,)
)
Defendants.)
_____)

Case No. 1:96CV01285
(Judge Lamberth)

NOTICE OF APPEAL

Notice is hereby given that Gale A. Norton, Secretary of the Interior, and Aurene M. Martin, Acting Assistant Secretary of Interior-Indian Affairs, defendants in this case, hereby appeal to the United States Court of Appeals for the District of Columbia from the Preliminary Injunction entered on July 28, 2003, under Docket Number 2159. A copy of the July 28, 2003 Preliminary Injunction is attached hereto.

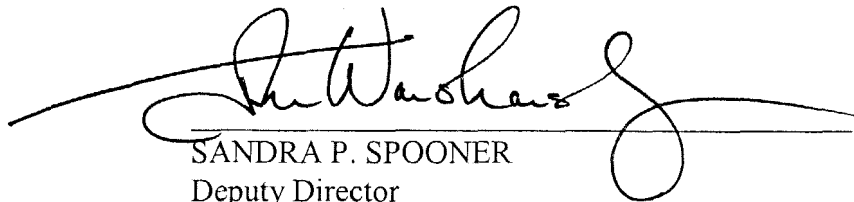
Respectfully submitted,

ROBERT D. McCALLUM, JR.
Associate Attorney General

PETER D. KEISLER
Assistant Attorney General

STUART E. SCHIFFER
Deputy Assistant Attorney General

J. CHRISTOPHER KOHN
Director

A handwritten signature in black ink, appearing to read "John Warshawsky", is written over a horizontal line.

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September 25, 2003

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIAELOUISE PEPION COBELL, et al.,

Plaintiffs,

v.

GALE A. NORTON, Secretary of the
Interior, et al.,

Defendants.

Civil Action Number 96-1285 (RCL)

FILED

JUL 28 2003

NANCY MAVER WILKINSON, CLERK
U.S. DISTRICT COURTPRELIMINARY INJUNCTION

For the reasons stated in the Court's memorandum opinion issued this date, the Court now enters a preliminary injunction in this matter. This Preliminary Injunction ("Order") supersedes and replaces the Temporary Restraining Order entered by this Court on June 27, 2003.

A. Definitions

For purposes of this Order only, the following terms are defined as follows:

1. Information Technology System. Any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information, including computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources.

2. **Individual Indian Trust Assets.** Particular lands, natural resources, monies, or other assets held in trust at a particular time by the Federal Government for a Tribe, Alaskan natives, or that are or were at a particular time restricted against alienation, for individual Indians.
3. **Management.** Actions that control, govern, administer, supervise, or regulate the use or disposition of Individual Indian Trust Assets.
4. **Federal Record.** This term is defined in 44 U.S.C. § 3301, and includes all documentary materials, regardless of physical form or characteristics, made or received under Federal law or in transaction of public business and preserved or are appropriate for preservation as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities or because of the informational value of the data in them.
5. **Individual Indian Trust Data.** Information stored in any Information Technology System that evidences, embodies, refers to, or relates to — directly or indirectly and generally or specifically — a Federal Record that reflects the existence of Individual Indian Trust Assets, and that either (1) was used in the Management of Individual Indian Trust Assets, (2) is a title or ownership record, (3) reflects the collection and/or disbursement of income from Individual Indian Trust Assets, (4) reflects a communication with a beneficiary (Individual or Tribe), or (5) was (a) created for the Bureau of Indian Affairs (BIA), Office of the Special Trustee (OST), or for a Tribe to use in the Management of Individual Indian Trust Assets; (b) provided to BIA, OST, or to a Tribe for use in the management of Individual Indian Trust Assets; and (c) used by the bureau or

agency that created the record to manage Individual Indian Trust Assets.

6. House. The storage by electronic means of Individual Indian Trust Data.
7. Access. The ability to gain electronic entry into Information Technology Systems.
8. Reconnected Systems. All Information Technology Systems that have been reconnected to the Internet under the protocols developed in conjunction with the December 17, 2001 Consent Order Regarding Information Technology.

B. Substantive Provisions

In accordance with the foregoing, it is hereby ORDERED that:

1. The Interior defendants shall immediately disconnect from the Internet all Information Technology Systems within the custody or control of the U.S. Department of the Interior, and its employees, agents, and contractors, that House or Access Individual Indian Trust Data, until such time as the Court approves their reconnection to the Internet, with the following two exceptions:
 - (a) Immediate disconnection shall not be required for each specifically identified Information Technology System and computer that the Interior defendants certify, within ten (10) days of the date of entry of this Order, to be essential for protection against fires or other threats to life or property, and provide a specific justification in support thereof, in accordance with Rule 11 of the Federal Rules of Civil Procedure.
 - (b) Immediate disconnection shall not be required for each specifically identified Reconnected System that the Interior defendants certify,

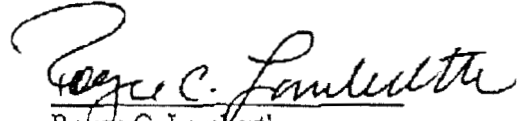
within fifteen (15) days of the date of entry of this Order, and in accordance with Rule 11 of the Federal Rules of Civil Procedure, that the Interior Department currently believes either (1) does not House or Access to Individual Indian Trust Data, and provide a specific justification thereof, or (2) is secure from Internet access by authorized users, and provide a specific justification in support thereof, stating in specific terms the security measures that are presently in place to protect unauthorized Internet access to the Individual Indian Trust Data that the Information Technology System Houses or provides Access to.

2. Within thirty (30) days of the date of entry of this Order, plaintiffs may file with the Court their response to the representations made in the certifications described in section B.1(b).
3. Within thirty (30) days of the date of entry of this Order, the Interior defendants shall file with the Court a proposal setting forth a method of approving individual reconnections of disconnected Interior computer systems, and of determining whether the Reconnected Systems should stay reconnected. The proposal should demonstrate a method of providing to the Court adequate evidence that the Reconnected Systems and the Information Technology Systems disconnected pursuant to this Order are secure against Internet access by unauthorized users, and provide a means to verify the representation that the Reconnected Systems and the Information Technology Systems disconnected pursuant to this Order are secure against Internet access by unauthorized users.

4. Within ten (10) days thereafter, plaintiffs may comment on the Interior defendants' proposed procedures.
5. The Court will decide on the record before it whether a Reconnected System shall remain connected to the Internet, and will decide all future applications for reconnection.
6. The Consent Order Regarding Information Technology, which is dated December 17, 2001, is hereby stayed, effective immediately.

SO ORDERED.

Date: 7-28-03
4:35 p.m.


Royce C. Lamberth
United States District Judge

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on September 25, 2003 I served the foregoing *Notice of Appeal* by facsimile in accordance with their written request of October 31, 2001 upon:

Keith Harper, Esq.
Native American Rights Fund
1712 N Street, N.W.
Washington, D.C. 20036-2976
(202) 822-0068

Dennis M Gingold, Esq.
Mark Kester Brown, Esq.
607 - 14th Street, NW, Box 6
Washington, D.C. 20005
(202) 318-2372

By Facsimile and U.S. Mail upon:

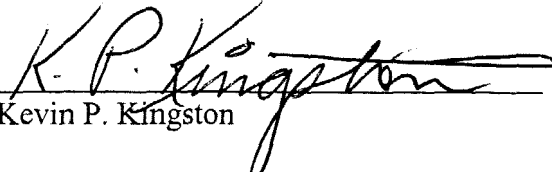
Alan L. Balaran, Esq.
Special Master
1717 Pennsylvania Avenue, N.W., 13th Floor
Washington, D.C. 20006
(202) 986-8477

Per the Court's Order of April 17, 2003,
by Facsimile and by U.S. Mail upon:

Earl Old Person (*Pro se*)
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(406) 338-7530

By U.S. Mail upon:

Elliott Levitas, Esq
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Kevin P. Kingston